

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Katherine White	Team: Squad #5	CCRB Case #: 202007569	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 11/15/2020 9:13 PM	Location of Incident: 105 Avenue X	Precinct: 60	18 Mo. SOL 5/15/2022	EO SOL 5/15/2022	
Date/Time CV Reported Sun, 11/15/2020 11:22 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 11/15/2020 11:22 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Timothy Brovakos	00000	943025	060 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mubbashar Zahid	03267	965634	060 PCT
2. POM Steven Tatar	21004	959287	060 PCT
3. POM John Dean	15205	952645	060 PCT
4. POM Joseph Borrero	28310	964401	060 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
B.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos frisked § 87(2)(b)	
C.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos frisked § 87(2)(b)	
D.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.	
E.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.	
F.LT Timothy Brovakos	Abuse: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.	

Case Summary

On November 15, 2020, § 87(2)(b) filed this complaint on the CCRB website (**BR01**).

On November 15, 2020, at approximately 9:13 p.m., § 87(2)(b) was a passenger in a vehicle driven by § 87(2)(b) in the vicinity of 105 Avenue X in Brooklyn. Lieutenant Timothy Brovakos, then assigned to the 60th Precinct, stopped § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g)). Police Officers Mubbashar Zahid, Steven Tatar, John Dean, and Joseph Borrero, all then assigned to the 60th Precinct, were also present. Lt. Brovakos frisked § 87(2)(b) searched his vehicle, and frisked § 87(2)(b) and also supervised as other officers frisked them and searched the vehicle (**Allegations B-D: Abuse of Authority**, § 87(2)(g)). Lt. Brovakos did not give business cards to § 87(2)(b) or § 87(2)(b) (**Allegations E-F: Abuse of Authority**, § 87(2)(g)).

The investigation obtained BWC footage capturing the incident (**BR02-06**, summarized at **BR07-11**).

Lt. Brovakos has since been promoted to the rank of Lieutenant Special Assignment and reassigned to the 71st Precinct. PO Zahid has also been reassigned to the 71st Precinct.

On September 8, 2021, this case was reassigned from SI Julian Phillips to the undersigned, after SI Phillips' departure from the CCRB.

Findings and Recommendations

Allegation (A) Abuse of Authority: Lieutenant Timothy Brovakos stopped the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.

The officers' BWC footage (**BR02-06**) did not capture any views of § 87(2)(b)'s vehicle before he pulled over. When Lt. Brovakos approaches the vehicle, its front windows are completely rolled down and not visible. At 01:05 in Lt. Brovakos' BWC video (**BR03**), he shines his flashlight at § 87(2)(b)'s rear driver's window, which has opaque black tints. Lt. Brovakos's flashlight does not illuminate the car's interior when it shines into the tinted window, and he asks § 87(2)(b) to lower the window, presumably so he can see into the rear of the car.

§ 87(2)(b) testified in his initial complaint (**BR01**), two phone statements (**BR12-13**), and his interview (**BR14**). His statements were generally consistent. § 87(2)(b) testified that § 87(2)(b) was not intoxicated and that he was driving on Avenue X from the intersection of West 11th Street towards the intersection of West 8th Street. § 87(2)(b) attempted to turn left at West 8th Street, but § 87(2)(b) told him that it was one-way street, so § 87(2)(b) made a U-turn and drove back down Avenue X. "Part way" down the street, an NYPD vehicle activated its lights, and § 87(2)(b) pulled over.

The investigation successfully contacted § 87(2)(b) but he claimed to have no memory whatsoever of this incident and therefore did not provide any testimony (**BR21**).

Lt. Brovakos was not interviewed until approximately ten months after the incident (**BR15**). He testified that he was driving the police vehicle and first observed § 87(2)(b)'s vehicle when he noticed that its front driver's window, and potentially all other windows, were tinted. Lt. Brovakos did not recall the vehicle doing a U-turn or observing any indication that the driver was intoxicated. Lt. Brovakos did not recognize the vehicle and did not recall seeing any infractions other than the

window tints. Lt. Brovakos made the decision to stop the vehicle. Lt. Brovakos ultimately used his discretion and chose not to issue any summonses for the window tints.

Based upon the BWC footage, the investigation concluded that the window tints on § 87(2)(b)'s vehicle appeared to be so dark that they completely obscured the vehicle's interior.

New York State Vehicle and Traffic Law § 375 (12-a)(b)(2) states that motor vehicles cannot have front windshields, side windows, or rear windows that transmit less than seventy percent of visible light (**BR23**).

§ 87(2)(g)

Allegation (B) Abuse of Authority: Lieutenant Timothy Brovakos frisked § 87(2)(b)
Allegation (C) Abuse of Authority: Lieutenant Timothy Brovakos searched the vehicle in which § 87(2)(b) and § 87(2)(b) were occupants.
Allegation (D) Abuse of Authority: Lieutenant Timothy Brovakos frisked § 87(2)(b)

It is undisputed that there was marijuana in the vehicle, that the vehicle smelled of marijuana, and that the vehicle contained at least one open container of alcohol. It is also undisputed that Lt. Brovakos frisked both men and searched the vehicle, and that other officers took similar actions. As Lt. Brovakos was supervising the other officers on scene, these allegations are pleaded solely against him.

At 1:30 in Lt. Brovakos' BWC footage (**BR03**), Lt. Brovakos asks § 87(2)(b) if he has been drinking. Lt. Brovakos states that § 87(2)(b)'s eyes look "glassy." At 01:38, Lt. Brovakos tells § 87(2)(b) "Just for the sake of the camera, I gotta have you step out of the car." § 87(2)(b) exits the car, and Lt. Brovakos frisks him. At 02:08, Lt. Brovakos says, "You got open beers in the car, I mean, you look wasted, you know what I'm saying? The car stinks like weed, too. You guys just smoke a fatty?" § 87(2)(b) acknowledges that the car smells of marijuana and says that he has not cleaned it. Lt. Brovakos says, "Well, you've gotta clean it out, man. It stinks to high heaven." At 2:30, Lt. Brovakos begins searching the vehicle. While searching, he notes that he has located "the joint they were just smoking," and identifies that § 87(2)(b) was a "recent arrest." At 05:45, two glass bottles are visible in the rear seat. At 09:10, Lt. Brovakos briefly frisks § 87(2)(b).

§ 87(2)(b) testified that officers ordered him to exit the vehicle and that PO Zahid frisked his arms, torso, and legs. Lt. Brovakos then frisked § 87(2)(b)'s torso and thighs. Lt. Brovakos then searched § 87(2)(b)'s vehicle and found an open bottle of beer in the back seat of the vehicle, as well as a "clip" of marijuana. The officers informed § 87(2)(b) that he appeared to be intoxicated and could not drive the vehicle for one hour.

Lt. Brovakos testified that he smelled a strong odor of burning marijuana emanating from the vehicle and saw that its interior was "hazy" with light smoke. Lt. Brovakos recognized § 87(2)(b) from an unknown date between January and March of 2020, when he was arrested for § 87(2)(b) crystal methamphetamine. Lt. Brovakos spoke to § 87(2)(b) who "slightly" slurred his speech and responded slowly. Lt. Brovakos believed, based on these factors, that § 87(2)(b) might have been under the influence of alcohol or drugs. Lt. Brovakos directed § 87(2)(b) and § 87(2)(b) to exit the vehicle because the odor of marijuana gave him probable cause and he wished to search the civilians and the vehicle with the intention of locating

evidence of the crime of burning marijuana inside a vehicle in public. Lt. Brovakos did not specifically recall whether he merely frisked § 87(2)(b) or searched him, but he stated that he “should have” done both. Lt. Brovakos did not specifically recall checking § 87(2)(b) in this manner but stated that he may have done so. Lt. Brovakos searched the vehicle for marijuana due to the smell of burning marijuana. Lt. Brovakos searched everywhere he could without damaging the vehicle, including its glove box, seats, center console, and trunk. Lt. Brovakos did not recall locating any marijuana in the vehicle, although he stated that he may have.

§ 87(2)(g)

An odor of marijuana emanating from a vehicle gives officers sufficient justification to search the vehicle and its occupants. *People v. Chestnut*, 43 A.D.2d 260 (1974) (**BR16**).

§ 87(2)(g)

Allegation (E) Abuse of Authority: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.

Allegation (F) Abuse of Authority: Lieutenant Timothy Brovakos failed to provide § 87(2)(b) with a business card.

It is undisputed that Lt. Brovakos did not offer business cards to § 87(2)(b) or § 87(2)(b) and that he did not ensure that any other officer did so. The BWC footage (**BR02-06**) does not capture any officer providing business cards to § 87(2)(b) or § 87(2)(b).

Lt. Brovakos testified that he did not offer either § 87(2)(b) or § 87(2)(b) a business card because he had probable cause based upon the marijuana he found in the vehicle. In addition, he did not give a card because neither § 87(2)(b) nor § 87(2)(b) asked for one. Lt. Brovakos did not have any other reason for not offering a business card. Lt. Brovakos did not recall any of the other officers offering business cards, and he noted that they also would not have been required to do so.

NYC Administrative Code § 14-174 (**BR22**) and Patrol Guide Procedure 203-09 (**BR17**) require that an officer provide a business card to any civilian whom he stops, frisks, or searches, unless the interaction results in a summons or arrest. Officers must also offer business cards if they search a vehicle in an incident which does not result in a summons or arrest.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been party to two CCRB complaints and has been named as a victim in nine allegations (**BR14**):

○ § 87(2)(b)

§ 87(2)(b)

- Lt. Brovakos has been a member of the NYPD for 15 years and has been a subject in 21 CCRB complaints and 54 allegations, of which four were substantiated:
 - 201500206 involved a substantiated allegation of a vehicle search against Lt. Brovakos. The Board recommended Command Discipline B, and the NYPD imposed Formalized Training.
 - 201905132 involved a substantiated allegation of discourtesy (word) against Lt. Brovakos. The Board recommended Command-Level Instructions, and the NYPD imposed Instructions.
 - 201910398 involved substantiated allegations of discourtesy (word) and failure to provide a business card against Lt. Brovakos. The Board recommended Command Discipline A. The NYPD has not yet imposed discipline.
 - In addition, LT Brovakos is a subject in 13 complaints and 65 allegations, filed after this complaint, all but two of which are still open. The two closed cases have no substantiated allegations.
 - § 87(2)(b)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of May 4, 2021, the New York City Office of the Comptroller has no record of a Notice of Claim being filed regarding this complaint (**BR19**).
- § 87(2)(b), § 87(2)(c)

Squad: 5

Investigator:	<u>KW</u>	<u>INV Katherine White</u>	<u>February 3, 2022</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Daniel Giansante</u>	<u>IM Daniel Giansante</u>	<u>February 3, 2022</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date